IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAMERON INTERNATIONAL CORPORATION,	§	
	§	
Plaintiff,	§	
v.	§	
	§	Cause No. 4:16-cv-2117
STEVEN ABBISS and FMC TECHNOLOGIES SINGAPORE PTE LTD,	§	
	§	
Defendants.		

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND REQUEST FOR PERMANENT INJUNCTION (WITH SUPPORTING DECLARATIONS)

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Cameron International Corporation ("Cameron" or "Plaintiff") files this Motion for Temporary Restraining Order, Preliminary Injunction, and Request for Permanent Injunction, along with supporting declarations ("Motion for Injunction"), against Defendants Steven Abbiss ("Abbiss") and FMC Technologies Singapore Pte Ltd ("FMC") (collectively, "Defendants"). Plaintiff filed this breach of contract action against Defendants for breach of Non-Compete, Non-Solicitation, and Confidentiality Agreements ("Non-Compete Agreements") [Dkt. 1]. Cameron further seeks to enjoin Defendants from violating the Non-Compete Agreements.

The reasons supporting this Motion for Injunction are more fully set forth in the attached *Memorandum in Support* and supporting declarations, which are hereby incorporated by reference into this Motion for Injunction.

Plaintiff is willing to post a reasonable bond for the temporary restraining order and preliminary injunction.

WHEREFORE, Plaintiff respectfully requests that the Court issue a Temporary Restraining Order against Defendants; set the Motion for Preliminary Injunction for hearing at the earliest possible time; and that, on hearing, issue a Preliminary Injunction against Defendants; and that, on final trial, issue a Permanent Injunction against Defendants. A proposed Temporary Restraining Order and Preliminary Injunction Order granting this Motion for Injunction are attached.

Dated: July 18, 2016

Respectfully submitted,

BAKER HOSTETLER LLP

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ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF NOTICE

I hereby certify that the undersigned notified G. Scott Fiddler, counsel for Steven Abbiss, by e-mail, hand-delivery, and telephone on July 18, 2016, that the Motion for Temporary Restraining Order was filed in this Court on July 18, 2016.

/s/ *Edward L. Friedman*
Edward L. Friedman

CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system and was sent to the following known counsel for Defendants by e-mail on this 18th day of July, 2016. A copy was also sent by hand delivery to the following known counsel for Defendants:

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Defendants.	§	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND REQUEST FOR PERMANENT INJUNCTION (WITH SUPPORTING DECLARATIONS)

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Cameron International Corporation ("Cameron" or "Plaintiff") files this Memorandum in Support of its Motion for Temporary Restraining Order, Preliminary Injunction, and Request for Permanent Injunction, along with supporting declarations, against Defendants Steven Abbiss ("Abbiss") and FMC Technologies Singapore Pte Ltd ("FMC") (collectively, "Defendants").

I.
OVERVIEW

This is a breach of non-compete and non-disclosure of confidential information agreement case. In June 2016, Abbiss, a 25-year key employee of Cameron, was hired by FMC, a direct competitor of Cameron, as its General Manager for the Middle East. At the time of Abbiss's resignation, he was Cameron's Oman Country Manager. Even though Abbiss was based out of Oman, Abbiss had access to, and knowledge of, Cameron's confidential information and trade secrets concerning its oil and gas industry operations across the Middle East. Abbiss has knowledge of these trade secrets though briefings he received on Cameron's business strategies in the region and his interaction and communications with other country managers in the region. Abbiss's employment with FMC is in violation of three non-compete agreements executed by Abbiss (which provide that venue and jurisdiction shall be exclusively in the state or federal courts located in Harris County, Texas) in exchange for substantial awards of Cameron stock and access to confidential information of Cameron. Abbiss is now poised to use the confidential information of Cameron concerning its customers, margins, new product offerings, and business strategies in the Middle East to aid FMC in unfairly competing against Cameron in violation of his non-disclosure and non-compete obligations to Cameron. Unless Abbiss is restrained from violating the non-compete provisions in the agreements by working for FMC in the Middle East, it is inevitable that Abbiss will disclose and use Cameron's confidential and trade secret information in breach of his non-compete agreements with Cameron, thus causing Cameron irreparable harm.

II.
STATEMENT OF THE FACTS

A. CAMERON AND FMC ARE DIRECT COMPETITORS IN THE MIDDLE EAST.

Cameron is a world-wide leading provider of flow equipment products, systems, and services to oil, gas, and process industries. Leveraging its global manufacturing, engineering, and sales and service network, Cameron works with drilling contractors, oil & gas producers, pipeline operators, refiners, and other process owners to control, direct, adjust, process, measure, and compress pressures and flows. *Declaration of Alexander ("Sandy") Ewen* at ¶ 2 ("Ewen Decl."). Abbiss worked for Surface Systems, a group within Cameron. (*Id.*). The Surface Systems group provides wellhead and valve products, systems, and services used in surface oil and gas drilling and production. (*Id.*). The group is an integral part of Cameron's flow equipment leadership in oil, gas, and other process markets. (*Id.*). The Surface Systems group is the largest provider of surface production equipment in the industry. (*Id.*). Cameron offers to its customer's comprehensive operation solutions, flow control products, services, and technologies. (*Id.*).

Cameron is active in the Middle East, providing surface systems solutions to clients across a variety of countries, including: Oman, Yemen, Saudi Arabia, Qatar, United Arab Emirates, Kuwait, and Iraq. (*Id.* at ¶ 3).

FMC is a direct competitor of Cameron throughout the world, including the Middle East. (*Id.* at ¶ 4). In June of 2016, FMC hired Abbiss, a key 25-year employee of Cameron. (*Id.*). Abbiss most recently served as a District Manager for Cameron in Oman. (*Id.*). In this position, Abbiss had access to, and has knowledge of, confidential information and trade secrets of Cameron relating to its entire Middle East operations, customers, competitive bidding strategy, financials information, and technology under development that is to be rolled-out in the Middle East. (*Id.*). FMC hired Abbiss as its General Manager in the Middle East. (*Id.*). Because FMC is a leading competitor of Cameron in the Middle East and because Abbiss is being assigned to a position in which he has intimate knowledge of the trade secrets and business strategies of Cameron, there is an imminent danger to Cameron that Abbiss, in his position at FMC, will use and disclose Cameron's trade secrets, causing irreparable harm to Cameron. (*Id.*).

B. FMC STANDS TO GAIN AN UNFAIR COMPETITIVE ADVANTAGE BY ACCESSING CAMERON'S CONFIDENTIAL INFORMATION AND TRADE SECRETS THROUGH ABBISS.

FMC regularly competes with Cameron for business and projects throughout the Middle East. Many of those projects are awarded based on a competitive bidding process (called tenders). (*Ewen Decl.* at ¶ 5). Abbiss has confidential information as to margins and costs in many of the Middle East countries to which he has been appointed General Manager for FMC (which can readily be used to undercut Cameron's bid prices), as well as knowledge of Cameron's bidding strategy in the Middle East. (*Id.*). Compounding this immediate threat to

Cameron is that in recent months, FMC has suffered market share losses to Cameron. (*Id.*). FMC is actively seeking to recoup its losses in the Middle East and to expand its market share and operations in the Middle East. (*Id.*). Hiring Abbiss, who has intimate knowledge of Cameron's bidding strategies, margins/costs, and competitive strategy, gives FMC an unfair advantage in seeking to take business away from Cameron. (*Id.*). As to business that is awarded without competitive bidding in the Middle East, Abbiss has knowledge of where Cameron has secured those opportunities and how it was successful, as well as potential opportunities for non-bid work and how Cameron is pursuing those opportunities. (*Id.*).

Cameron devotes substantial resources, including millions of dollars and thousands of man hours, towards developing new products, services, and technology offerings for its customers, as well as business and sales strategies to effectively compete in the Middle East. (*Id.* at ¶ 6). This information is kept confidential by Cameron and is considered trade secret by Cameron. (*Id.*). This information is not shared outside the company. (*Id.*). Abbiss, because of his position of management and leadership in Cameron, is intimately familiar with this confidential information. (*Id.*). If this information were obtained by a competitor of Cameron, such as FMC, Cameron stands to lose a substantial competitive advantage and market share in the Middle East, as its competitor would be able to reap the benefits of Cameron's industry-leading products, services, technologies, and strategies by diverting business away from Cameron without expending any of the corresponding costs and man-hours of development. (*Id.*).

C. CAMERON HAS INVESTED SUBSTANTIAL RESOURCES IN TRAINING ABBISS, WHO HAS BEEN PROVIDED WITH CAMERON CONFIDENTIAL INFORMATION.

Cameron has invested substantial time and money in providing specialized training to Abbiss. Abbiss first started with Cameron twenty-five (25) years ago in approximately September 1990 with little- to-no industry experience. (*Ewen Decl.* at ¶ 7). Abbiss recently resigned from his employment at Cameron effective May 31, 2016, to join FMC. (*Id.*). As previously mentioned, at the time of his resignation, Abbiss was a highly valued employee of Cameron. (*Id.*). Abbiss, based upon his 25 years of employment with Cameron and the various positions of management and leadership he held with the company in the Middle East and Asia, had access to, and knowledge of, highly confidential information of Cameron. (*Id.*). During his 25 years of employment at Cameron, Abbiss worked his way up from customer service representative in Leeds, United Kingdom (in the company's subsea division) to a position as a bidding coordinator in that same division. (*Id.*). From 1997 to 2005, Abbiss worked as a sale representative and then Territory Sales Manager in the Middle East. (*Id.*). Then, in December 2005, Abbiss was promoted to District Sales Manager for South & Southeast Asia. (*Id.*). In June 2010, he was promoted to Regional Manager, Asia. (*Id.*).

In January 2015, Abbiss was transferred back to the Middle East where he served as District Manager in Oman. (*Id.* at ¶ 8). Although the title of District Manager of Oman may seem less than that of his previous position, based upon the volume of business Cameron conducts in Oman, the transfer was viewed as a promotion and an increase in duties and responsibilities. (*Id.*).

For the next one-and-a-half years (until his resignation), Abbiss was intimately involved in managing and implementing Cameron's business strategies in Oman. (*Id.* at ¶ 9). Because of the inter-relatedness of the industry and business in the Middle East, Abbiss also had extensive confidential information related to Cameron's business operations and customers throughout the Middle East, including Saudi Arabia, Qatar, United Arab Emirates, Kuwait, and Iraq. (*Id.*).

Most customers in the Middle East bid out their projects to oil and gas service companies through a competitive tender process. (*Id.* at ¶ 10). Competitive pricing and product offerings are critical to obtaining work in the Middle East. (*Id.*). Cameron devotes substantial resources to performing market research to identify how to respond to prospective tenders and address customer needs, as well as in developing new cost-effective technologies and methodologies to provide competitive solutions to identified needs. (*Id.*). As a result of Cameron's hard work to bid competitively in the Middle East, Cameron has the largest market share in most of the Middle Eastern countries it does business. (*Id.*). In connection with his work for Cameron, Abbiss has intimate knowledge of the projects Cameron was bidding on, the after-market margin on key bids, Cameron's bidding strategies, as well as Cameron's confidential technical and non-technical data, financial data, customer preferences, pricing information, cost information, margins, and business strategies. (*Id.*).

For example, in February 2016, Abbiss attended a multi-day conference for Cameron held in Singapore. (*Id.* at ¶ 11). During this conference, Abbiss was provided detailed updates on Cameron's business strategies worldwide, but most particularly in the Middle East. (*Id.*). Abbiss was briefed extensively on Cameron's strategies to maintain and expand its business in the Middle East, which included specific and detailed briefing as to Cameron's business activities and prospects for many of the countries for which Abbiss is now General Manager for FMC. (*Id.*). For each of those countries, Abbiss was provided information as to Cameron's bookings, customer revenue, current and historic after-market margins (for countries across the Middle East), 2015 financials, and the specific actions and strategies that are going to be undertaken by Cameron in 2016-2017 in a number of those countries to maintain and gain business. (*Id.*). For those countries, Abbiss was provided extensive briefing on the revenue, margins, and utilization rates Cameron achieved. (*Id.*). This information alone is highly confidential information which, now in the hands of FMC, enables FMC to undercut Cameron in future bids. (*Id.*). Abbiss also received extensive briefing (as to many of the countries in which he is the General Manager for FMC) as to specific revenue opportunities Cameron perceives in those countries over the course of the next year and the specific strategies Cameron seeks to employ to obtain the work. (*Id.*). Cameron identified the potential customers from which Cameron believed it could obtain additional opportunities, the resources Cameron was devoting to obtain those opportunities, and Cameron's assessment of the risks and concerns related to pursing those business opportunities. (*Id.*). Again, armed with this information, FMC will have an unfair advantage in usurping those opportunities from Cameron. (*Id.*). During the presentations, Abbiss also was made knowledgeable of Cameron's research into competitor activity in the Middle East, including research on FMC's activity. (*Id.*). If Abbiss were to disclose this information to FMC, it would provide FMC with a clear picture of Cameron's understanding of FMC's business that FMC could use to shift resources to areas of FMC's business that Cameron is not intending to compete as heavily against or where, based upon the confidential information Abbiss had access to, where Cameron is most vulnerable. (*Id.*).

Abbiss also attended a presentation on Cameron's strategy for competing in the down oil market and new market penetration strategies based on developing unconventional plays in the Middle East. (*Id.* at ¶ 12). Further, Abbiss was briefed on new technology (which has not been market released) for developing unconventional plays, including synergies to be realized in this market based on Cameron's recent merger with Schlumberger. (*Id.*). During this meeting, Abbiss was briefed extensively on new flow control product offerings being developed by Cameron for initial roll-out in Saudi Arabia and Kuwait. (*Id.*). Armed with this knowledge, Abbiss—as General Manager for FMC in the Middle East—may very well take steps, or implement strategies to undermine Cameron's ability to take advantage of these unconventional plays. (*Id.*).

During the presentations, Abbiss was also extensively briefed on areas where Cameron may be vulnerable, including product failings or other customer satisfaction issues. (*Id.* at ¶ 13). This information is generally not known to Cameron's competitors. (*Id.*). Now that Abbiss is the General Manager for FMC in the Middle East, Abbiss is in a position where he can use his knowledge of where Cameron is most vulnerable to usurp business opportunities and client relationships from Cameron to FMC. (*Id.*).

These presentations, in addition to the day-to-day access that Abbiss had to the trade secrets of Cameron, effectively give Abbiss (and now FMC) a roadmap for Cameron's strategy in the Middle East for maintaining and gaining market share in the evolving oil economy, as well as Cameron's margins for use in upcoming tenders. (*Id.* at ¶ 14). If Abbiss were to use or share this information with FMC, which it is inevitable that he will do so as the General Manager of FMC in the Middle East, it will enable FMC to undercut Cameron's pricing on upcoming tenders, usurp business and opportunities away from Cameron, and/or enable FMC to alter its strategy to focus on markets where Cameron is not priced as competitively. (*Id.*). FMC could also alter its product, service, or technology offerings to match Cameron's confidential custom packages designed to meet needs for upcoming tenders. (*Id.*). In short, FMC stands to gain substantial business opportunities and market share from Cameron across a variety of Middle Eastern countries. (*Id.*).

As mentioned, Abbiss also had frequent (if not daily) access to and knowledge of Cameron trade secrets. (*Id.* at ¶ 15). Abbiss would routinely receive monthly updates on Cameron's Middle Eastern operations across multiple markets, including many of the countries for which he is now the General Manager for FMC. (*Id.*). In these monthly updates, upcoming projects and tenders were discussed, as well as Cameron's market analyses and competitor research, including research into FMC's activities in each country. (*Id.*).

Abbiss also spoke regularly with, and developed a rapport with, various Cameron country managers across the Middle East. (*Id.* at ¶ 16). Shortly before leaving Cameron, Abbiss was integrally involved in developing Cameron's strategies for gaining market share in Oman, and was involved in discussions involving Cameron's strategies across other markets in the Middle East. (*Id.*). Thus, Abbiss was intimately aware of recent developments and opportunities in the Middle East market for Cameron. (*Id.*).

D. CAMERON SOUGHT TO PROTECT ITS INFORMATION BY, AMONG OTHER THINGS, ENTERING INTO NON-COMPETE AND NON-DISCLOSURE AGREEMENTS WITH ABBISS.

Cameron takes substantial steps to protect its confidential information entrusted to its employees,[1] including by, among other things, entering into non-compete and non-disclosure agreements with its employees—like Abbiss—to limit the disclosure and use of Cameron's confidential information to Cameron's business. (*Ewen Decl.* at ¶ 18). To this end, Cameron entered into three agreements with Abbiss that contained confidentiality, non-disclosure, and non-compete obligations. (*Id.* at ¶ 17). These agreements were the annual Restricted Stock Unit Award Agreements awarded to Abbiss in January 2014, January 2015, and January 2016 (collectively, "Non-Compete Agreements"). *Declaration of Tobias Glueck* at ¶ 6 ("Glueck Decl.").

On or around January 1, 2014, Abbiss entered into a Restricted Stock Unit Award Agreement with Cameron (the "2014 RSU"). *The 2014 RSU is attached to the Tobias Decl. as **Exhibit A***. Under the terms of the 2014 RSU, Cameron granted Abbiss substantial shares of stock in exchange for Abbiss's execution of non-compete, non-solicit, and non-disclosure agreements. In Paragraph 9(a) of the 2014 RSU, Abbiss acknowledged and agreed that:

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[1] For example, Cameron has adopted confidentiality and nondisclosure policies; required password protection on its computers and electronic information network systems; limited the use of external devices; and limited access to information on a "need-to-know" basis. (*Ewen Decl.* at ¶ 18).

> The Participant acknowledges that the Participant is in possession of and has access to confidential information, including material relating to the business, products and/or services of the Company or Employer and that he or she will continue to have such possession and access during employment by the Company or Employer. The Participant also acknowledges that the Company's (or Employer's) business, products and services are highly specialized and that it is essential that they be protected, and, accordingly, the Participant agrees that as partial consideration for the Award granted herein that should the Participant engage in any "Detrimental Activity," as defined below, at any time during his or her employment or during a period of one year following his or her termination the Company or Employer shall be entitled to: (i) recover from the Participant the value of any portion of the Award that has been paid; (ii) seek injunctive relief against the Participant; (iii) recover all damages, court costs, and attorneys' fees incurred by the Company or Employer in enforcing the provisions of this Award, and (iv) set-off any such sums to which the Company or Employer is entitled hereunder against any sum which may be owed the Participant by the Company or Employer.

(*2014 RSU* at ¶ 9(a)). "Detrimental Activity" includes, among other things:

> (i) rendering of services for any person or organization, or engaging directly or indirectly in any business, which is or becomes competitive with the Company or any Subsidiary; (ii) disclosing to anyone outside the Company, or any Subsidiary or using in other than the Company's or any Subsidiary's business, without prior written authorization from the Company or any Subsidiary, any confidential information including material relating to the business, products or services of the Company or any Subsidiary acquired by the Participant during employment with the Company or any Subsidiary; (iii) soliciting, interfering, inducing, or attempting to cause any employee of the Company or any Subsidiary to leave his or her employment, whether done on Participant's own account or on account of any person, organization or business which is or becomes competitive with the Company or any Subsidiary, or (iv) directly or indirectly soliciting the trade or business of any customer of the Company or any Subsidiary.

(*2014 RSU* at ¶ 9(b)). To date, Abbiss has received in excess of 302 shares of Cameron stock for executing the 2014 RSU. (*Glueck Decl.* at ¶ 7).

On or around January 1, 2015, Abbiss executed a Restricted Stock Unit Award Agreement with Cameron (the "2015 RSU"). *The 2015 RSU is attached to the Tobias Decl. as* ***Exhibit B***. Under the terms of the 2015 RSU, Cameron granted Abbiss further substantial shares of stock in exchange for Abbiss's execution of a non-compete, non-solicit, and non-disclosure agreement. In Paragraph 9(a) of the 2015 RSU, Abbiss acknowledged and agreed that:

> The Participant [Abbiss] acknowledge that the Participant is in possession of and has access to confidential information, including material related to the business, products and/or services of the Company or Employer [Cameron] and that he or she will continue to have such possession and access during employment by the Company or Employer. The Participant also acknowledges that the Company's or Employer's business, products and services are highly specialized and that it is essential that they be protected, and, accordingly, **the Participant agrees that as partial consideration for the Award granted herein that should the Participant engage in any "Detrimental Activity," as defined below, at any time during his or her employment or during a period of one year following his or her termination the Company or Employer shall be entitled to: (i) recover from the Participant the value of any portion of the Award that has been paid; (ii) seek injunctive relief against the Participant pursuant to the provisions of subsection (c) below; (iii) recover all damages, court costs, and attorneys' fees incurred by the Company or Employer in enforcing the provisions of this Award, and (iv) set-off any such sums to which the Company or Employer is entitled hereunder against any sum which may be owed the Participant by the Company or Employer.**

(*2015 RSU* at ¶ 9(a) (emphasis in original)). "Detrimental Activity" was defined the same as the 2014 RSU, and included competing against Cameron or using or disclosing Cameron's confidential information (*2015 RSU* at ¶ 9(b)). To date, Abbiss has received in excess of 360 shares of Cameron stock for executing the 2015 RSU. (*Glueck Decl.* at ¶ 8).

On or around January 1, 2016, Abbiss executed a third Restricted Stock Unit Award Agreement with Cameron (the "2016 RSU"). *The 2016 RSU is attached to the Tobias Decl. as* ***Exhibit C***. Under the terms of the 2016 RSU, Cameron granted Abbiss further substantial shares of stock in exchange for Abbiss's execution of an identical non-compete, non-solicit, and non-disclosure agreement as he had executed in 2015 (*2016 RSU* at ¶ 8(a-b)).[2] To date, Abbiss has received in excess of 317 shares of Cameron stock worth in excess of $20,000.00 for executing the 2016 RSU. (*Glueck Decl.* at ¶ 9).[3]

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[2] Paragraphs 8(a-b) of the 2016 RSU provide in relevant part that:

(a) The Participant acknowledges that the Participant is in possession of and has access to confidential information, including material relating to the business, products and/or services of the Company or Employer and that he or she will continue to have such possession and access during employment by the Company or Employer. The Participant also acknowledges that the Company's or Employer's business, products and services are highly specialized and that it is essential that they be protected, and, accordingly, **the Participant agrees that as partial**

E. ABBISS'S EMPLOYMENT WITH FMC VIOLATES ABBISS'S NON-COMPETE AGREEMENTS.

Despite these contractual obligations, on May 31, 2016, Abbiss left Cameron to work for FMC as its General Manager, Middle East, covering a region for which he had access to confidential information for Cameron. (*Ewen Decl.* at ¶¶ 10-16). Indeed, FMC has indicated that Abbiss will be working at least in the United Arab Emirates, Iran, Iraq, Kurdistan, Kuwait, and Qatar. Abbiss had access to Cameron's confidential information and trade secrets in all of these markets. (*Glueck Decl.* at ¶ 10). For example, as noted above, Abbiss was regularly briefed on upcoming tenders, financial information, marketing strategies, new product developments, and target customers/projects for Cameron across the Middle East in the months and weeks leading up to his resignation from Cameron in May 2016. (*Ewen Decl.* at ¶¶ 10-16). Abbiss is poised to

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consideration for the Award granted herein that should the Participant engage in any "Detrimental Activity," as defined below, at any time during his or her employment or during a period of one year following his or her termination the Company or Employer shall be entitled to: (i) recover from the Participant the value of any portion of the Award that has been paid; (ii) seek injunctive relief against the Participant pursuant to the provisions of subsection (c) below; (iii) recover all damages, court costs, and attorneys' fees incurred by the Company or Employer in enforcing the provisions of this Award, and (iv) set-off any such sums to which the Company or Employer is entitled hereunder against any sum which may be owed the Participant by the Company or Employer.

(b) "Detrimental Activity" for the purposes hereof, other than with respect to involuntary termination by the Company or Employer without Cause, shall include: (i) rendering of services for any person or organization, or engaging directly or indirectly in any business, which is or becomes competitive with the Company or Employer; (ii) disclosing to anyone outside the Company or Employer, or using in other than the Company's or Employer's business, without prior written authorization from the Company or Employer, any confidential information including material relating to the business, products or services of the Company or Employer acquired by the Participant during employment with the Company or Employer; (iii) soliciting, interfering, inducing, or attempting to cause any employee of the Company or Employer to leave his or her employment, whether done on Participant's own account or on account of any person, organization or business which is or becomes competitive with the Company or Employer, or (iv) directly or indirectly soliciting the trade or business of any customer of the Company or Employer. "Detrimental Activity" for the purposes hereof with respect to involuntary termination by the Company or Employer without Cause shall include only part (ii) of the preceding sentence.

[3] The 2014 RSU, 2015 RSU, and 2016 RSU are collectively referred to herein as the "Non-Compete Agreements."

immediately assist FMC in undercutting Cameron's business strategies and bids across the Middle East.

In light of the fact that Abbiss has gone to work for a direct competitor of Cameron in the same region where he had intimate access to and knowledge of Cameron's confidential information and business strategies, it is inevitable that Abbiss will use Cameron's confidential information in performing his job duties with FMC and breach his agreements with Cameron. (*Ewen Decl.* at ¶ 19). Indeed, it is hard to imagine how Abbiss could not be reasonably expected to draw on the confidential information he learned while at Cameron in performing such substantially similar duties in the same geographic market for FMC. (*Id.*).

F. Cameron has no Choice but to File Suit and Pursue this Preliminary Injunction.

In June 2016, Cameron exchanged multiple letters with FMC and Abbiss expressing its concerns with Abbiss's employment with FMC. (*Ewen Decl.* at ¶ 20). Despite good faith attempts to resolve this dispute, FMC continues to employ Abbiss in a position which violates his Non-Compete Agreements and where it is inevitable that Abbiss will use or disclose Cameron's confidential information and trade secrets while working for FMC, causing Cameron to suffer irreparable harm from the loss of its trade secrets (*See id.*). As such, FMC and Abbiss have given Cameron no choice but to file this lawsuit and to seek an injunction to preserve the status quo pending trial on the merits.

III.
LEGAL STANDARD

To obtain a temporary restraining order or prevail on a motion for preliminary injunction, Cameron must establish four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that it will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause Defendants; and (4) that the injunction will not disserve the public interest. *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998) (affirming preliminary injunction); *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir.2011) (same); *Khan v. Fort Bend Indep. Sch. Dist.*, 561 F. Supp. 2d 760, 763 (S.D. Tex. 2008).

IV.
ARGUMENTS & AUTHORITIES

A. THIS COURT HAS PERSONAL JURISDICTION TO ENJOIN DEFENDANTS.

Cameron filed this breach of non-compete and non-disclosure of confidential information agreement case in this Court based on diversity jurisdiction, pursuant to 28 U.S.C. § 1332: (1) Abbiss is a citizen of the United Kingdom who is domiciled in the United Arab Emirates, and (2) FMC is a Singapore private limited company (equivalent to a corporation) [Dkt. 1]. As a preliminary issue, this Court has personal jurisdiction to enjoin the foreign Defendants. To establish jurisdiction, a plaintiff "need only make a prima facie showing of jurisdiction, and its allegations in that regard are to be taken as true unless controverted; moreover, any conflicts are to be resolved in its favor." *Choice Equip. Sales, Inc. v. Captain Lee Towing, L.L.C.*, 43 F. Supp. 2d 749, 753 (S.D. Tex. 1999). Further, the Court has the power to issue the temporary injunctive relief in order to preserve existing conditions pending a decision on any question of jurisdiction. *Stewart v. Dunn*, 363 F.2d 591, 598 (5th Cir. 1966).

First, this Court has personal jurisdiction over Abbiss. Abbiss executed three separate Non-Compete Agreements in which he agreed to the "**exclusive venue and jurisdiction**" in the state or federal courts in Harris County, Texas. (*2014 RSU* at ¶ 19; *2015 RSU* at ¶ 19; *2016 RSU* at ¶ 18) (emphasis added)). Abbiss agreed to this exclusive venue and jurisdiction as a condition of the right to receive substantial Cameron stock (*Id.*; *Glueck Decl.* at ¶¶ 7-9). The Non-Compete Agreements' forum selection clauses are mandatory, as they clearly show that venue *and* *jurisdiction* are appropriate only (i.e., "exclusively") in Harris County, Texas. (*2014 RSU* at ¶ 19; *2015 RSU* at ¶ 19; *2016 RSU* at ¶ 18). *See Valero Mktg. & Supply Co. v. Gen. Energy Corp.*, 702 F. Supp. 2d 706, 712 (S.D. Tex. 2010) ("Where the agreement contains clear language showing that jurisdiction is appropriate only in a designated forum, the clause is mandatory.") (citations omitted). By agreeing to the mandatory forum-selection clauses, Abbiss consented to personal jurisdiction in the state or federal courts (including this Court) in Harris County, Texas. *Id.* To overcome the presumption that a mandatory forum-selection clause is enforceable, the party challenging the clause must make a "strong showing" that the clause is unreasonable. *Id.*

For example, in *Alliantgroup, L.P. v. Feingold*, this District Court denied defendant's motion to dismiss for lack of personal jurisdiction where defendant (who was a Massachusetts citizen) had agreed to a mandatory Texas forum-selection clause in his employment agreement. No. CIV. A. H-09-0479, 2009 WL 1109093, at *10 (S.D. Tex. Apr. 24, 2009). The forum-selection clause provided that personal jurisdiction was "solely" in the State of Texas. *Id.* The Court held that the mandatory clause was reasonable and enforceable. There was no evidence of fraud or overreaching by the Plaintiff employer, and the employer (who was headquartered in Houston, Texas) had a legitimate interest in litigating the disputes arising from the employment agreement in the venue of its principal place of business. *Id.* Likewise, the mandatory forum-selection clauses in Abbiss's Non-Compete Agreements should be enforced because: (1) there was no fraud or overreaching by Cameron in awarding the restricted stock units to Abbiss (*see Glueck Decl.* at ¶¶ 7-9), nor can it be said that providing for a mandatory forum for any disputes related to the agreements was fraudulent or overreaching, (2) Cameron's principal place of business is in Houston, Texas (*Gluek Decl.* at ¶ 12), and (3) Cameron has a legitimate interest in litigating this dispute (as well as any other's related to the Restricted Stock Agreements) in the same venue as its principal place of business to better ensure uniformity. *Id.* Therefore, the mandatory jurisdiction and venue provision in the agreements at issue are enforceable. This Court has personal jurisdiction over Abbiss.

Second, this Court has general jurisdiction over FMC, a Singapore private limited company. FMC maintains continuous and systematic contacts in Harris County, Texas. A court may exercise general jurisdiction over the defendant when the defendant engages in "continuous and systematic contacts" in the forum. *Rimkus Consulting Grp., Inc. v. Balentine*, 693 F. Supp. 2d 681, 685–86 (S.D. Tex. 2010) (holding foreign defendants subject to personal jurisdiction where they conducted activities in Texas, such as soliciting business from, marketing, and overseeing performance of services in Texas). FMC regularly solicits business and contracts for in Texas at, among other things, the Offshore Technology Conference held annually in Houston. (*Ewen Decl.* at ¶ 21).

B. THIS COURT SHOULD GRANT THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION BECAUSE THERE IS A SUBSTANTIAL LIKELIHOOD THAT CAMERON WILL PREVAIL ON THE MERITS.

To assess the likelihood of success on the merits, courts look to "standards provided by the substantive law." *Janvey v. Alguire*, 647 F.3d 585, 595–96 (5th Cir. 2011) (affirming preliminary injunction). The Non-Compete Agreements at issue here contain a Delaware choice-of-law provision that provides: "All questions concerning the validity, construction and effect of this Award Agreement shall be governed by the laws of the State of Delaware, without reference to principles of conflict of laws." (2014 RSU at ¶ 19, 2015 RSU at ¶ 19, 2016 RSU at ¶ 18).

Indeed, the Houston First Court of Appeals, in reviewing Cameron's RSU Agreement, previously upheld the Delaware choice-of-law provision, finding the choice of law provision to be reasonable. Additionally, the Houston Court of Appeals also ruled that Cameron's non-compete restrictions contained in the RSUs are enforceable under Delaware law. *Cameron*

International Corp. v. Guillory, 445 S.W.3d 840, 847–48 (Tex. App.—Houston [1st Dist.] 2014, no pet. h.) (finding Cameron was entitled to temporary injunctive relief to enjoin former employee from violating the non-compete restrictions in the restricted stock agreements).

1. This Court must look to Delaware law to assess likelihood of success on the merits.

A federal court sitting in diversity must apply the substantive law of the forum state, including the forum's choice-of-law rules. *Chartis Specialty Ins. Co. v. Tesoro Corp.*, 113 F. Supp. 3d 924, 936 (W.D. Tex. 2015) (citing *Lockwood Corp. v. Black*, 669 F.2d 324, 327 (5th Cir. 1982)). Texas courts apply Section 187(2) of the Restatement (Second) of Conflict of Laws to determine whether a choice-of-law provision in a covenant not to compete is enforceable. *Exxon Mobil Corp. v. Drennen*, 452 S.W.3d 319, 324 (Tex. 2014), *reh'g denied* (Feb. 27, 2015). Section 187(2) provides:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of applicable law in the absence of an effective choice of law by the parties.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 187(2).

While the Texas Supreme Court has recognized that parties "cannot require that their contract be governed by the law of a jurisdiction which has *no relation* whatever to them or their agreement," *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 677 (Tex. 1990) (declining to enforce Florida choice-of-law provision in non-compete agreement where employee performed services in Texas) (emphasis added), the Texas Supreme Court subsequently clarified that the public policy concerns articulated in *DeSantis* had shifted to one that values the ability of an employer to maintain uniformity in its non-competition agreements. *Drennen*, 452 S.W.3d at 329–30. In *Drennen*, the Texas Supreme Court upheld a detrimental activity-triggered forfeiture provision in a restricted stock agreement that applied New York law. *Id.* at 331. The Court found that both Texas and New York bore some relation to the parties and the agreements at issue: ExxonMobil was headquartered in Texas, the former employee defendant worked in Houston when he executed the agreements, ExxonMobil was a multinational corporation with a presence in New York, the former employee spent three years of his career working for ExxonMobil in its New York City office, and the subject matter of the transaction (the stock) were traded on the New York Stock Exchange. *Id.* at 324. The Court, after reviewing the public policy considerations, applied New York law under the stock agreement's choice-of-law clause. *Id.* at 332.

More recently, the Houston First Court of Appeals citied *Drennen* as authority for enforcing the Delaware choice-of-law provision in Cameron's restricted stock award agreements. *Guillory*, 445 S.W.3d at 847–48. The Court held that Cameron could enforce the one-year non-compete covenant contained in its restricted stock agreement against a former employee who left the company to start a competitive business. *Id.* at 849. The Court applied *Drennen* and determined that Delaware law controlled, as specified in the parties' agreement. *Id.* at 848. The Court explained that under the Restatement framework, "if Texas does not have a materially greater interest than Delaware in the application of the RSU agreement's noncompete provision . . . , it is immaterial whether the application of Delaware law here would be contrary to a fundamental policy of Texas." *Id.* The Court found that Texas had no materially greater interest in the dispute where the employee defendant had not, and never had been, an employee of

Cameron in Texas because "Texas has no overriding interest in protecting an employment relationship between a multinational corporation and a resident of another state." *Id.* at 848.

Likewise, here, Cameron seeks to enforce the same one-year non-compete covenant contained in the restricted stock agreements against Abbiss. Abbiss has never been domiciled in Texas or worked for Cameron in Texas. (S*ee Ewen Decl.* at ¶¶ 7-9). Cameron employed Abbiss overseas in the United Kingdom, Southeast Asia, and the Middle East, not in Texas. (*Glueck Decl.* at ¶¶ 2-5; *Ewen Decl.* at ¶¶ 7-9). There is also a reasonable relationship between Delaware and Abbiss's Non-Compete Agreements because Cameron is a Delaware corporation. (*Glueck Decl.* at ¶ 12). Moreover, enforcing the Delaware choice-of-law provision enables Cameron to maintain uniformity in its non-competition agreements (*Glueck Decl.* at ¶ 12)—a fundamental public policy articulated by the Texas Supreme Court in *Drennen*. *See Drennen*, 452 S.W.3d at 329–30. Therefore, the Court should give effect to the Non-Compete Agreements' Delaware choice-of-law provisions, and apply Delaware law to assess Cameron's likelihood of success on the merits.

2. The Non-Compete Agreements are enforceable under Delaware law.

To be enforceable under Delaware law, a covenant not to compete must: (1) meet general contract law requirements, including adequate consideration; (2) be reasonable geographically and temporally; (3) advance a legitimate economic interest of the party seeking to enforce the covenant; and (4) survive a balance of the equities. *See Am. Homepatient, Inc. v. Collier*, 2006 WL 1134170, at *4 (Del. Chanc. Ct. Apr. 19, 2006) (holding non-compete agreement was enforceable contract); *Tri-State Courier & Carriage, Inc. v. Berryman*, 2004 WL 835886, at *10

(Del. Chanc. Ct. Apr. 15, 2004) (granting permanent injunction to enforce non-compete agreement).[4]

i. Abbiss's Non-Compete Agreements are valid and enforceable contracts.

As to the first inquiry, Delaware courts evaluate whether the Non-Compete Agreement fulfills general contract principles—such as whether the promise was in fact made and whether it was supported by adequate consideration. *Lewmor, Inc. v. Fleming*, No. CIV. A. 8355, 1986 WL 1244, at *2 (Del. Ch. Jan. 29, 1986). Cash payment under a stock purchase agreement is valid consideration for non-compete agreements under Delaware law. *Tristate Courier & Carriage, Inc.*, 2004 WL 835886, at *10. For example, in *TriState Courier*, the Delaware Chancery Court found a non-compete covenant fulfilled general contract principles where (1) a promise not to compete was made, (2) valid consideration (in the form of cash payment under the stock purchase agreement) was given, and (3) no performance had been excused. *Id.*

Likewise, each of Abbiss's Non-Compete Agreements with Cameron is supported by sufficient consideration: the right to receive, and actual receipt of, a substantial number of Cameron stock, cash payments, and receipt of Cameron's confidential information. (*See 2014 RSU* at ¶¶ 1, 3, 5, 9-10; *2015 RSU* at ¶¶ 1, 3, 5, 9-10; *2016 RSU* at ¶¶ 1, 3-4, 8-9). Abbiss received this consideration in exchange for his promise not to compete against Cameron and solicit Cameron's employees or customers for a limited period of time after his employment ended, and disclose or use Cameron's confidential information. (*2014 RSU* at ¶ 9; *2015 RSU* at ¶ 9; *2016 RSU* at ¶ 8). Therefore, the Non-Compete Agreements are valid and enforceable contracts supported by sufficient consideration under Delaware law.

[4] Delaware courts view unpublished opinions as having precedential value. *See* DEL. SUP. CT. RULE 17(a) commentary; RULE 14(b)(vi)(4).

ii. The Non-Compete Agreements are reasonable in scope.

The Non-Compete Agreements restrict Abbiss from engaging in any "Detrimental Activity" for a period of one year following his employment termination. (*2014 RSU* at ¶ 9(b); *2015 RSU* at ¶ 9(b); *2016 RSU* at ¶ 8(b)). "Detrimental Activity" is defined to include:

> (i) rendering of services for any person or organization, or engaging directly or indirectly in any business, which is or becomes competitive with the Company or any Subsidiary; (ii) disclosing to anyone outside the Company, or any Subsidiary or using in other than the Company's or any Subsidiary's business, without prior written authorization from the Company or any Subsidiary, any confidential information including material relating to the business, products or services of the Company or any Subsidiary acquired by the Participant during employment with the Company or any Subsidiary; (iii) soliciting, interfering, inducing, or attempting to cause any employee of the Company or any Subsidiary to leave his or her employment, whether done on Participant's own account or on account of any person, organization or business which is or becomes competitive with the Company or any Subsidiary, or (iv) directly or indirectly soliciting the trade or business of any customer of the Company or any Subsidiary.

(*Id.*). As previously discussed, the Houston First Court of Appeals has recognized that these exact same (word-for-word) non-compete restrictions are enforceable under Delaware law. *Guillory*, 445 S.W.3d at 849 (holding trial court erred in denying Cameron injunctive relief to enjoin further violations of one-year non-compete covenant contained in restricted stock agreement).

Reasonable Scope Restrictions: In the Non-Compete Agreements, Abbiss is restricted from rendering services for any person or organization, or engaging directly or indirectly in any business that is "*competitive with*" Cameron. (*2014 RSU* at ¶ 9(b); *2015 RSU* at ¶ 9(b); *2016 RSU* at ¶ 8(b)) (emphasis added). Delaware courts enforce as reasonable non-compete agreements that restrict an employee from engaging in any activities "competitive with" an employer, such as the ones here. *Delaware Exp. Shuttle, Inc. v. Older*, No. CIV. A. 19596, 2002 WL 31458243, at *13 (Del. Ch. Oct. 23, 2002) (enjoining former employee from directly or indirectly engaging in a business "competitive with" the former employer). Under Delaware law, the key is that the Non-Compete Agreements prohibit Abbiss from rendering services for or engaging in any business that is "competitive with" Cameron, as opposed to any business that is "similar to" Cameron. Non-competes that prohibit employees from working for any company whose business is "similar to" the former employer are vague and overbroad. *See Norton Petroleum Corp. v. Cameron*, No. Civ. A. 15212-NC, 1998 WL 118198, at *3 (Del. Ch. Mar. 5, 1998). In contrast, as explained by the Delaware Chancery Court, "competitive" restrictions, compared to "similar to" restrictions, inherently establish a "limit that ultimately protects the legitimate economic interests of the employer." *Delaware Exp. Shuttle*, 2002 WL 31458243, at *13.

Additionally, the present Non-Compete Agreements restrict Abbiss from "directly or indirectly soliciting the trade or business of any customer" of Cameron. (*2014 RSU* at ¶ 9(b); *2015 RSU* at ¶ 9(b); *2016 RSU* at ¶ 8(b)). Delaware courts also uphold as reasonable these types of restrictions. *Gas Oil Products, Inc. of Delaware v. Kabino*, No. C.A. 9150, 1987 WL 18432, at *1 (Del. Ch. Oct. 13, 1987) (granting preliminary injunction and enjoining former employees from directly or indirectly soliciting the business of any customers of their former employer). Therefore, the Non-Compete Agreements' defined detrimental activities are enforceable under Delaware law. *See, e.g., Cameron International Corp.*, 445 S.W.3d at 849 (enforcing identical non-compete restrictions under Delaware law).

Reasonable Geographic Limit: In the instant Non-Compete Agreements, there are no geographical limits set. Yet, Delaware courts uphold non-compete agreements that disallow activities that are "in competition with" an employer or involve soliciting the customers of an employer, even if no geographic limitation is expressly set forth in the agreements. *Delaware Exp. Shuttle, Inc.*, 2002 WL 31458243, at *13. As Delaware courts explain, these types of non-compete agreements "inherently establish a geographic limit that ultimately protects the legitimate economic interests of the employer and provide a reasonable and foreseeable basis for ascertaining the territorial scope of the covenant not to compete." *Id.*

For example, in *CIENA Corp. v. Jarrard*, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's preliminary injunction enforcing non-competition, non-disclosure, and non-solicitation covenants under Delaware law. 203 F.3d 312, 324 (4th Cir. 2000). The Circuit Court held that the district court did not err in concluding that a non-competition agreement that prohibited employment with a competitor for 12 months was reasonable in its geographical and durational limitations, although the agreement contained no specified geographical restriction. *Id.* at 324. The Court determined that enforcing the non-competition restriction nationwide was geographically reasonable to protect the employer's legitimate economic interests considering the following factors: the company marketed its products and services nationwide, the former employee had a key supervisory position in the company, and the former employee knew the company's trade secrets and confidential information in an industry where such information was "power and the key to everything". *Id.* at 315, 318, 321.

Under Delaware law, a court determines the reasonable geographical restriction by ascertaining the area where the competition may occur, thus protecting the legitimate economic interests of the employer, without unreasonably burdening the interests of the former employee. *Delaware Exp. Shuttle, Inc.*, 2002 WL 31458243, at *13 ("Thus, the Court may, in the appropriate circumstances, enforce an agreement without express territorial scope and establish a reasonable geographical limitation where there is none in the Non-Competition Agreement."). As the Delaware Chancery Court explained:

> While most judicial opinions regarding the reasonableness of the geographic extent of employee non-competition agreements speak in terms of physical distances, the reality is that it is the employer's goodwill in a particular market which is entitled to protection. If this market, …, extends throughout the nation, *or indeed even internationally*, and the employee would gain from the employment some advantage in any part of that market, then it is appropriate that an employee subject to a non-competition agreement be prohibited…regardless of their geographic location.

Research & Trading Corp. v. Pfuhl, No. 12527, 1992 WL 345465, slip op. at 12 (Del. Chanc. Ct. Nov. 18, 1992) (emphasis added).

Here, Cameron seeks to prohibit Abbiss from engaging directly or indirectly in any business that is competitive with Cameron in the Middle East in order to protect Cameron's goodwill and confidential information in that market. Abbiss's employment with FMC as its General Manager of the Middle East violates the Non-Compete Agreements. Cameron regularly competes with FMC on bids for upcoming projects for customers across the Middle East. (*Id.* at ¶ 5). Based upon his 25 years of employment with Cameron and the various positions of management and leadership Abbiss held with Cameron in the Middle East (including as the Territory Sales Manager in the Middle East and District Manager in Oman), Abbiss gained access to, and knowledge of, Cameron's confidential information and trade secrets concerning its oil and gas industry operations across the Middle East. (*Ewen Decl.* at ¶¶ 9-16; *Glueck Decl.* at ¶¶ 5, 10). Abbiss further gained access to Cameron's strategies for bidding against FMC, including Cameron's financial data, target customers, product offerings, and marketing strategies, across the Middle East, including in the very countries that FMC contends Abbiss is now working for FMC: Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran. (*Ewen Decl.* at ¶¶ 9-16; *Glueck Decl.* at ¶¶ 5, 10). If Abbiss were allowed to violate his Non-Compete Agreements by working for FMC or any competitor of Cameron in a substantially similar position in the Middle East in which he has knowledge of Cameron's confidential information, Abbiss would inevitably disclose and/or use Cameron's confidential information and trade secrets to the detriment of Cameron. (*Ewen Decl.* at ¶ 19).

Modification Permitted: Under Delaware law, courts can modify the restrictions of non-compete covenants to the extent that is reasonable, and then enforce as modified. *See Knowles-Zeswitz, Music, Inc. v. Cara*, 260 A.2d 171, 175 (Del. Chanc. Ct. 1969) (modifying geographic limits to enforce non-compete agreement); *John Roane, Inc. v. Tweed*, 89 A.2d 548, 557 (Del. Ch. 1952) (modifying 5-year covenant to last for 4 years). Thus, to the extent the Court believes that the restrictions contained in Abbiss's Non-Compete Agreements are overly broad as written—which Cameron does not believe they are, the Court has power to modify such restrictions to the extent reasonable and enforce as modified, including limiting Abbiss from being employed by FMC (or a competitor of Cameron) in the Middle East (Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran) for one year.

Reasonable Time Limit: Lastly, Delaware courts routinely uphold one-year restrictive covenants in employment agreements. *Research & Trading Corp. v. Pfuhl*, No. 12527, 1992 WL 345465, at *11, slip op. at 1–2, 12 (Del. Chanc. Ct. Nov. 18, 1992) (upholding one-year non-compete covenant and characterizing one-year duration as "plainly reasonable"); *All Pros Maids, Inc. v. Layton*, 2004 WL 1878784, at *5 (Del. Chanc. Ct. Aug. 9, 2004) (same); *Hammermill Paper Co. v. Palese*, C.A. No. 7128, 1983 WL 19786, at *6 (Del. Ch. June 14, 1983) (upholding one-year limitation as "within the parameters of time restrictions accepted by courts of this State [Delaware]); *Faw, Casson & Co. v. Cranston*, 375 A.2d 463, 469 (Del. Ch. 1977) (enjoining employee defendant from competing in excess of one year). Abbiss's Non-Compete Agreements contain one-year non-compete and non-solicit obligations, which are enforceable under Delaware law. (*2014 RSU* at ¶ 9(b); *2015 RSU* at ¶ 9(b); *2016 RSU* at ¶ 8(b)).

iii. The Non-Compete Agreements advance Cameron's legitimate economic interest.

Through the Non-Compete Agreements, Cameron seeks to protect its goodwill and its confidential information. Delaware courts have long recognized these as legitimate economic interests of a former employer. *Tristate Courier & Carriage, Inc.*, 2004 WL 835886, at *10. *See also Research & Trading Corp.*, 1992 WL 345465, at *12 ("Interests which the law has recognized as legitimate include protection of employer goodwill and protection of employer confidential information from misuse.").

As noted above, each of the Non-Compete Agreements were executed by Abbiss in order to protect Cameron's goodwill and confidential information and trade secrets.[5] (*Ewen Decl.* at ¶¶ 7-17). If Abbiss were to divulge Cameron's confidential information to FMC, or use Cameron's confidential information, which is inevitable given his position of employment with FMC, in violation of his Non-Compete Agreements, Cameron will suffer irreparable harm, including loss of its trade secrets, goodwill, and competitive position in the Middle East. (*Id.* at ¶ 19).

For example, Abbiss was briefed extensively in the months leading up to his resignation in May 2016. (*Id.* at ¶ 11). In February 2016, Abbiss attended a multi-day conference discussing Cameron's strategies for maintaining and expanding its market share in the Middle East. (*Id.*). Abbiss was provided information as to Cameron's bookings, current and historic margins, 2015 financials and the specific actions and strategies that are going to be undertaken by Cameron in 2016-2017 in a number of those countries to maintain and gain business. (*Id.*). This information

[5] Delaware has adopted the Uniform Trade Secrets Act, which defines "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique or process, that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. DEL. CODE ANN. TIT. 6, § 2001.

alone is highly confidential information which, once in the hands of FMC, would enable FMC to undercut Cameron in future bids. (*Id.*). Abbiss also received extensive briefing (as to many of the countries in which he is the General Manager for FMC) as to specific revenue opportunities Cameron perceives in those countries over the course of the next year and the specific strategies Cameron seeks to employ to obtain the work. (*Id.*). Cameron expended substantial resources identifying the potential customers from which Cameron believed it could obtain additional opportunities, the resources Cameron was devoting to obtain those opportunities, and Cameron's assessment of the risks and concerns related to pursing those business opportunities. (*Id.*). If Abbiss were allowed to disclose this information to FMC, FMC would gain an unfair competitive advantage in usurping these opportunities from Cameron by leveraging Cameron's strategies, product offerings, and margins without expending any of the money or man-hours that Cameron sunk in developing the same. (*Id.* at ¶¶ 11-12).

Abbiss was also briefed extensively on Cameron's research into competitor activity across the Middle East—including FMC's business activities. (*Id.* at ¶ 11). If Abbiss were to disclose this competitor-research to FMC, it would provide FMC with a clear picture of Cameron's understanding of FMC's business that FMC could then use to shift resources to areas of FMC's business that Cameron is not intending to compete as heavily against or where, based upon the confidential information Abbiss had access to, where Cameron is most vulnerable. (*Id.*).

Furthermore, Abbiss was briefed on new technology (which has not been market released) for developing unconventional plays, including synergies to be realized in this market based on Cameron's recent merger with Schlumberger. (*Id.* at ¶ 12). Abbiss has received detailed information on new flow control product offerings being developed by Cameron for initial roll-out in Kuwait, a country which Abbiss now services for FMC, and Suadi Arabia. (*Ewen Decl.* at

¶ 12; *Glueck Decl.* at ¶ 10). Armed with this knowledge, Abbiss may very well take steps, or implement strategies to undermine Cameron's ability to take advantage of these unconventional plays. (*Ewen Decl.* at ¶ 12).

Abbiss received access to essentially a treasure-trove of Cameron's confidential and trade secret financial, customer, business, and product information in the months and weeks leading up to his resignation on May 31, 2016, that Abbiss is now poised to use while working for FMC in the same region. (*See Ewen Decl.* at ¶¶ 9-19).

iv. Balance of Equities Favors Enforcement of the Non-Compete Agreements.

Delaware courts also balance the likelihood of irreparable harm that Cameron will suffer if the injunction is denied against the likelihood of harm to Defendants if the injunction issues. *See CIENA Corp.*, 203 F.3d at 323. In the Non-Compete Agreements, the parties acknowledged that "immediate and irreparable damage" could be caused by Abbiss's breach of the non-compete covenants (*2014 RSU* at ¶ 9(d); *2015 RSU* at ¶ 9(d); *2016 RSU* at ¶ 8(d)). Under Delaware law, contractual stipulations as to irreparable harm suffice to establish that element for the purpose of issuing injunctive relief. *Atlantic Diving Supply, Inc. v. Moses*, No. 2:14-cv-380, 2014 WL 3783343, at *11 (E.D. Va. July 31, 2014) (applying Delaware law to grant preliminary injunction to enforce non-compete restriction); *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 68 A.3d 1208, 1226 (Del. 2012) (explaining Delaware "courts have long held that 'contractual stipulations as to irreparable harm alone suffice to establish that element for the purpose of issuing…injunctive relief.'"); *True N. Commc'ns, Inc. v. Publicis S.A.*, 711 A.2d 34, 44 (Del. Ch. 1997) ("The irreparable harm element of the injunction standard is established by [defendant's] own contractual stipulation…Defendants cannot now say there is no irreparable harm.").

Nonetheless, even if the Court disregards this provision, Cameron has established it will suffer irreparable injury if the injunction is denied, and that this threatened injury outweighs any damage that the injunction may cause Defendants. Delaware courts grant injunctions to protect former employers "when an employee has taken a job with a competitor, the nature of which will demand that the employee disclose and use trade secrets of the former employer regardless of the employee's intent so to disclose or to make use of the trade secrets." *Am. Hoechst Corp v. Nuodex, Inc.*, No. 7950, 1985 WL 11563, at *3 (Del. Ch. Apr. 23, 1985); *see* DEL. CODE ANN. TIT. 6, § 2002(a) ("Actual or threatened misappropriation may be enjoined."). For example, in *CIENA Corp.*, the Court noted that the former employee had worked in a "key position" at CIENA and had moved into a "key position" with a direct competitor. 203 F.3d at 323. The Court found that in this new position, the former employee could irreparably harm CIENA by disclosing CIENA's trade secrets to a direct competitor. *Id.* at 320, 323. In contrast, while the former employee would suffer economic hardship if enjoined, the employee's education and employment background enabled her to secure employment that did not directly compete with CIENA. *Id.* at 323. For these reasons, the Circuit Court approved the district court's analysis of the balance of hardships and grant of preliminary injunction that prohibited the employee from (1) employment with a competitor for 12 months and (2) disclosing CIENA's trade secrets. *Id.* at 320, 323.

Likewise, here, if Abbiss were allowed to violate his Non-Compete Agreements by working for FMC in a substantially similar position in the same geographic region which he has knowledge of Cameron's confidential information, Abbiss would inevitably disclose and/or use Cameron's confidential information and trade secrets for FMC's benefits. (*Ewen Decl.* at ¶ 19). For example, if FMC were to gain access to Cameron's pricing information, target customers, and margins for the Middle East—which were provided to Abbiss in the months leading up to his resignation from Cameron—FMC could upend Cameron's business strategy in the Middle East and unfairly divert business from Cameron's customers to FMC. (*Id.* at ¶ 14). By knowing Cameron's cost structure and margins, FMC could underbid Cameron. (*Id.*). By knowing Cameron's target customers and markets, FMC can alter its strategy to focus on regions and customers Cameron is not targeting as aggressively, or step back from spending resources on markets and customers that Cameron is targeting aggressively. (*Id.*).

Consequently, there is a substantial threat that Cameron will suffer irreparable injury if the injunction is denied, and this threat outweighs any hardship the injunction may cause Defendants. As such, the Non-Compete Agreements are enforceable under Delaware law and should be enforced. *See, e.g.*, *Cameron International Corp.*, 445 S.W.3d at 849 (granting temporary relief to enforce same non-compete agreement).

C. THIS COURT SHOULD GRANT THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION BECAUSE THE INJUNCTION WILL NOT DISSERVE THE PUBLIC INTEREST.

Finally, issuing a Temporary Restraining Order and Preliminary Injunction to enforce the Non-Compete Agreements are not against the public interest. "Enforcing reasonable non-compete agreements is within the public interest." *TransPerfect Translations, Inc. v. Leslie*, 594 F. Supp. 2d 742, 758 (S.D. Tex. 2009) (granting preliminary injunction); *see Simplexity, LLC v. Zeinfeld*, No. CIV.A. 8171-VCG, 2013 WL 1457726, at *10 (Del. Ch. Apr. 5, 2013) (granting preliminary injunction and noting non-compete agreement that is not unduly restrictive does not violate public policy).

Here, as discussed above, the Non-Compete Agreements are reasonable and advance Cameron's legitimate economic interest. Importantly, Cameron does not seek to prevent Abbiss from being employed in *any* position or in *any* country/region for FMC, but rather to prohibit him from working in a substantially similar position in the Middle East where it is inevitable that he will use and disclose Cameron's confidential information and trade secrets. (*Ewen Decl.* at ¶ 19).

Therefore, this Court should grant the temporary restraining order and preliminary injunction because (1) Cameron has a substantial likelihood of success on the merits; (2) there is a substantial threat that Cameron will suffer irreparable injury if the injunction is denied; (3) this threat outweighs any hardship the injunction may cause Defendants; and (4) the injunction will not disserve the public interest. In order to preserve the status quo during the pendency of this action, Cameron requests a Temporary Restraining Order that enjoins Abbiss, and those acting in concert with him from:

1. Using or disclosing Cameron's Confidential Information and Trade Secrets. For purposes of this Temporary Restraining Order, Cameron's Confidential Information and Trade Secrets includes technical, product, service, business, financial, and customer information that Abbiss was provided or had access to during the course and scope of his employment with Cameron that has not been disclosed by Cameron to the general public, including Cameron's margins, pricing, cost information, financial data, business strategies, target customers, competitor research, and new product development information; and,

2. Directly or indirectly participating in any bid or tender for surface systems products, services, or technologies in the Middle East (Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran).

Cameron further requests that on hearing, the Court issue a Preliminary Injunction, and on final hearing, a Permanent Injunction that enjoins Abbiss, and those acting in concert with him from:

1. Using or disclosing Cameron's Confidential Information and Trade Secrets. For purposes of this Temporary Restraining Order, Cameron's Confidential Information and Trade Secrets includes technical, product, service, business, financial, and customer information that Abbiss was provided or had access to during the course and scope of his employment with Cameron that has not been disclosed by Cameron to the general public, including Cameron's margins, pricing, cost information, financial data, business strategies, target customers, competitor research, and new product development information;

2. Directly or indirectly participating in any bid or tender for surface systems products, services, or technologies in the Middle East (Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran);

3. Rendering any services to FMC or a competitor of Cameron, or engaging directly or indirectly in any business that is competitive with Cameron in the Middle East (Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran);

4. Directly or indirectly soliciting Surface Systems business of any customer of Cameron in the Middle East (Oman, Yemen, Saudi Arabia, Bahrain, United Arab Emirates, Kuwait, Qatar, Iraq, and Iran); and,

5. Directly or indirectly soliciting, interfering, inducing, or attempting to cause any employee of Cameron to leave his or her employment.

Cameron also requests that the Court issue a Temporary Restraining Order, and on hearing, a Preliminary Injunction, and on final trial, a Permanent Injunction that enjoins FMC, and those acting in concert with it, from engaging in any act that causes Abbiss to violate any injunction issued by the Court.

V.
CONCLUSION

For the reasons set forth above, Cameron's Motion for a Temporary Restraining Order and Preliminary Injunction should be granted.

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Respectfully submitted,

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